IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1044 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MOHANBHAI DAHYABHAI MODI - Opponent(s)

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Appearance :
MR HL JANI APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/11/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 27.08.1996 passed by the learned Judicial Magistrate, First Class, Navsari in Criminal Case No. 1491 of 1989 whereby, the

respondent – accused was acquitted of the charges leveled against him.

2.0 The brief facts of the prosecution case are as under;

2.1 On 04.11.1988 the Food Inspector of the appellant – State visited the shop of the respondent. After completing necessary formalities, a sample of Chilly powder was collected in the presence of '*panchas',* after making necessary payment towards the same. One such sample was then sent to the Analyst for examination.

2.2 On examination, the sample was found to be adulterated. Therefore, a complaint with respect to the aforesaid offence was filed against the respondent and, ultimately, trial was conducted. In order to prove the guilt against the respondent, the prosecution has examined the complainant – Vajesinh Chimanlal Gamit as PW – 1 at Exhibit – 10 and two 'panch' witnesses, viz. Arvindbhai Jivanbhai at Exhibit – 74 and Daulatbhai Desai at Exhibit – 75 and has also relied upon several documentary evidence. At the end of trial, the learned Magistrate acquitted the respondent of the charges leveled against him. Hence, this appeal.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been

very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In the case of ***M. S. Narayana Menon @ Mani v. State of Kerala & anr.*** reported in ***(2006) 6 S.C.C. 39***, the Apex Court has narrated about the powers of this Court in appeal against the order of acquittal. In para – 54 of the decision, the Court has observed as under;

> "54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two views are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below."

5.0 Even in a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> “16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with”.
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> [*Emphasis supplied*]

6.0 Similar principle has been laid down by the Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

7.0 Both the 'panch' witnesses have been examined vide Exhibits – 74 & 75 respectively. However, none of them has supported the case of the prosecution and they have been declared as 'hostile'. Apart from that the prosecution has failed to

give a satisfactory explanation to the fact as to why there way a delay of sixteen days in approving the Report of the Public Analyst. The examination was carried out on 16.11.1998. However, the same was approved only on 01.12.1988 meaning thereby, that there was a delay of sixteen days which has not been explained by the prosecution. Further more, it has also come on record that the sample in question was not collected after following due procedure of law. Thus, there were serious lapses in the prosecution case.

8.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondent of the charges leveled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

9.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or

> to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

10.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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